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HIGH COURT OF CHHATTISGARH AT BILASPUR

CORAM : Hon'ble Shri Jagdish Bhalla, Ag. CJ. &
Hon'ble Shri Dilip Raosaheb. Deshmukh, J.

Writ Petition No. 1668 of 1997

ORDER FOR CONSIDERATION

Sd/-
Acting Chief Justice

HON'BLE SHRI D.R. DESHMUKH, J. I agree.

Sd/-
Dilip Raosaheb Deshmukh
Judge

POST FOR PRONOUNCEMENT
OF THE ORDER: 30/07/2007

Sd/-
Ag. Chief Justice

(580)

HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH

CORAM: HON'BLE SHRI JAGDISH BHALLA, Ag. CJ. &
HON'BLE SHRI DILIP RAOSAHEB DESHMUKH, J.

Writ Petition No. 1668 of 1997

Petitioner:

Dr. B.P.Bansal Retired Asstt. Professor & Head Sociology Deptt. Durga Mahavidyalaya, Raipur. M.P. – 492001 S/o Shri Kanhiyalal Bansal aged 62 years Qualification: M.A., B.Com, LL.B(P), N.D., Yoga Visharad, Siddhant Ratna.

Permanent Address :-
Shiv Bawa Kaya Kalpa Nature Cure Clinic. Sai Bhawan, 552, C.P.Colony Post MORAR, GWALIOR – 474 006 (M.P.) Phone No. 0751-367763.

Present Address : Dr. Bansals Nature Cure Clinic Near (Seth Alam Chand Khanduja Krishna Mandir) 20/76, shakti Nagar, Delhi – 110 007 Phone : 7142292, 7293122, 6426838

VERSUS

RESPONDENTS

1. M.P. Government, Higher Education Department, for non-Govt. Institutions Through Commissioner Higher Education Department, for non-Govt. Institutions M.P. Government E-2/84, Mahavir Nagar Bhopal – 462014 (M.P.)

2. M.P. Government, Higher Education Department, Through: The Hon'ble Secretary Education Department, Secretariat Vallabh Bhawan, Bhopal (M.P.)

3. Governing Body of Durga Mahavidhyalaya, Through: The Hon'ble Chairman, Governing Body, Durga Mahavidhyalaya Raipur – 492001 (M.P.)

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4. Governing Body of Madhav Mahavidhyalaya, Through: The Hon'ble Chairman, Madhav Mahavidhyalaya, Gwalior (M.P.)

5. Dr. Shrimati Professor Shyama Agarwal, Professor of Sociology, Sociology Department, Madhav Mahavidhyalaya, Gwalior (M.P.)

6. Ravishanker University – Raipur (M.P.) through – Registrar Ravishanker University, Raipur (M.P.)

7. "The Hon'ble Chairman, Governing Body, Maharaja Mansingh Mahavidyalaya Gwalior M.P. PIN 474008"

8. State of Chhattisgarh Through Commissioner Higher Education, Raipur (C.G.)

Present : Petitioner in person.
Shri Sachin Singh Rajput, counsel for the State of Madhya Pradesh.
Shri Gautam Bhaduri, counsel for respondent No.3.
Shri Vinay Harit, Deputy Advocate General for the State of Chhattisgarh.

ORDER

(Delivered on 30th July, 2007)

The following order of the Court was passed by **Hon'ble Jagdish Bhalla, Ag. CJ.**

Short question involved in this writ petition is whether the petitioner is entitled for arrears of salary for the period between 02-11-1979, when his services came to an end / terminated and till he was again appointed as Assistant Professor in the year 1989 in Durga College Raipur, continuity & regularization of his service and in the process pensionary benefits from the aforesaid date?

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The petitioner was appointed as Lecturer in Sociology by an order dated 01-08-1977 against the leave vacancy in Maharaja Mansingh College, Gwalior caused because of the extraordinary study leave taken by the permanent incumbent Smt. Laxmi Tomar under University Grants Commission Scheme.

At the outset, the petitioner in person submitted that he is not pressing for arrears of salary, however, he restricts his prayer only to the outcome of continuity and regularization of his service i.e. pensionary benefits.

It has been submitted by the petitioner in person that though the petitioner was appointed against a leave vacancy, all formalities as contemplated under Statute 28, Rule 17(2) of Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 were completed.

In the above circumstances, the petitioner represented to the authorities for inclusion of his name in Form No.II of the statutory register, known as absorption register in accordance with Rule 5(2) of Bharti Niyam, 1979 and for the said purpose in light of Rule 5(1) it was mandatory upon the college authorities to send the name of the petitioner for entering the same into the register as referred hereinabove. Rules 5(1) and 5(2) of Bharti Niyam, 1979 read as under :

> "Rule 5(1) where the service of a teacher or an employee is terminated by an institution whether as a result of closure of the Institution or abolition of post or <u>for any other reason whatsoever</u>, such institution shall send information in respect thereof to the concerned Education Officer and Divisional Superintendent of Education in case of School and to the Education Officer and Ayog in case of Colleges in Form No. 1.

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FORM-I
[See Rule No.5(1)]

S.No.	Name of Teacher Employee	Date of Birth	Post Held	From	to	Qualification	Reason for termination of service
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1.	Shri B.P.Bansal Asstt. Prof. Sociology	05.01.1936	Asstt. Prof.	1.8.77	4.1.79	M.A. Sociology	Resumption of duties coming back From Teacher Fellowship of UGC by Laxmi Tomar Asstt. Prof. Sociology

Rule 5(2) : "The Education Officer, Divisional Superintendent of Education and the Ayog shall keep a record of the information received under sub-rule(1) in a register to be maintained in Form No.II.

FORM-II

[See Rule No. 5(2)]

S.No.	Name of Teacher/ employee	Date of Birth	Post Held	From	to	Qualifications	Reason for post termination of service
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

According to the petitioner, in spite of his best efforts he could not get his name entered in Form No. II of the statutory register for absorption. The petitioner filed Misc. Petition No.367/1982 and the said petition was decided on 28.03.1989 with a specific direction to the Ayog to enter the name of the petitioner in Form No. II. Aggrieved by the same, the petitioner filed S.L.P. No. 1901 of 1990 before Hon'ble

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Supreme Court and the same was dismissed by order dated 09.07.1990. Thereafter, the petitioner filed M.C.C. No.83 of 1991 against the judgment dated 28.03.1989, passed in Misc. Petition No.367 of 1982 and no interference was shown by the Madhya Pradesh High Court in light of the fact that the petitioner's S.L.P. referred hereinabove was dismissed on 09.07.1990. The petitioner was still not satisfied and he again filed another M.C.C. No.229 of 1992 against the order passed in M.C.C. No.83 of 1991 dated 29.07.1992. Even, the said M.C.C. was rejected by order dated 22.11.1994. Aggrieved by the order passed in M.C.C. No.229 of 1992, the petitioner preferred S.L.P. No.19243 of 1995 before Hon'ble Apex Court which was disposed of by order dated 25.07.1997 with an observation that it would be open for the petitioner to ventilate his grievances by way of a separate petition before appellate forum. In these circumstances, the petitioner has filed this writ petition which was heard and disposed of by order dated 21.08.1998. Aggrieved by the same, the petitioner filed S.L.P. which was converted into Civil Appeal No.4932 of 2000. The said civil appeal was allowed by order dated 26.09.2001 and the matter was remanded back to reconsider the matter on its merits by this Court as after reorganisation of the State of Madhya Pradesh on 01.11.2000, this Court came into existence and jurisdiction of Raipur being that of High Court of Chhattisgarh, this writ petition was transferred to this Court for consideration.

In light of the order passed by Madhya Pradesh High Court in Misc. Petition No.367/1982, the name of the petitioner was entered in Form No. II and in the process he was adjusted and appointed as Lecturer in Sociology department in Durga College, Raipur in the year 1989. Thereafter, the petitioner started representing with respect to the

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claim of seniority and regularization in light of his appointment against leave vacancy Maharaja Mansingh College, Gwalior.

According to the petitioner, he decided to file this writ petition in light of the order passed by Hon'ble Supreme Court dated 25-07-1997, in SLP No. 19243/1995. The aforesaid SLP was filed by the petitioner after being aggrieved by the order of the High Court rejecting review application moved against an order passed in contempt petition. The petitioner in person has raised the following grievances :

"i) That he was wrongly not directly absorbed as a Lecturer in Sociology in Raipur College;

ii) His second grievance is that in the light of the High Court's earlier decision in M.P.367/82 dated March 28,1989 he was entitled to be absorbed against an earlier vacancy available in Madhav College, Gwalior.

iii) His third grievance is that he was entitled to arrear of salary from 4-11-1979 to August 23, 1989.

iv) His other grievance is that in any case he could not have been kept on probation in Raipur College and he should have been given consequential further reliefs including promotion etc.

v) It was also his contention that in Form No.2 his name should have been inserted from 1979."

In light of the order passed by the Hon'ble Supreme Court, we consider it necessary to reexamine the matter in accordance with law, in the background of facts that the petitioner's case has checkered history. Petitioner is litigating since long. Petitioner, a senior citizen, had argued his own case before the Hon'ble Supreme Court and in the High Court, obviously with full emotions. We had made earnest endeavour to offer

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full opportunity to the petitioner to place his grievances before this Court even at the cost of repetition.

It has been submitted that respondent No.1 i.e. Ayog did not perform its duty as public authority by not entering the name of the petitioner in the said register thereby denying the absorption of the petitioner as there was a vacancy of Lecturer in sociology department. It has been further submitted that the petitioner is covered under the definition of teacher as provided under Section 2(1) of Bharti Niyam, 1979. It has been submitted by the petitioner that he has worked against leave vacancy for two years three months and four days and prior approval for termination of his services was given under Section 6(a) (iii) of Madhya Pradesh Ashasakiya Shiskhan Sanstha (Adhiyapakon tatha Anya Karmachariyon ke vetano ka sanday) Adhiniyam, 1978. It was pointed out by the petitioner that he made five representations before the Commission (Ayog) for absorption in different colleges, but the Commission refused to enter his name for being sponsored on illegal grounds that absorption is done for surplus persons retrenched due to rationalization and lack of work load and not for substitutes appointed temporarily. Shri J.P. Singhal, Secretary, M.P. Uchcha Shiksha Anudhan Ayog by an order dated 22-11-1979 communicated that since the petitioner was working as substituted teacher in place of Smt. Laxmi Tomar, he was not entitled for absorption elsewhere. According to the petitioner, this ground is not tenable in the eyes of law. According to the petitioner, he was entitled for absorption because he is covered by the definition of teacher and in light of Rule 5 he has a right to be absorbed. It was further argued by the petitioner that according to Rule 8(1) of Bharti Niyam,1979 whenever vacancy is to be filled up for the post of

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teacher or other employee a reference has to be made in accordance with Rule 8(1) to the Education Officer, the Divisional Superintendent of Education or Ayog, as the case may be, along with a requisition in Form No.III which is as follows :

Rule 8(1)

Where an Institution desires to fill up any vacancy of a post of a teacher or other employees, it shall make a reference to that effect to the Education Officer, the Divisional Superintendent of Education or the Ayog as the case may be, alongwith a requisition in Form No. III.

Form No. III

[See Rule 8(1)]
Requisition under sub-rule(1) of Rule 8 of the Madhya Pradesh A.S.S. Niyam 1979 to fill up Post of Teacher/other Employee.

S. No.	Name of Post	Number of Vacancies	Duration of Vacancies	Remark
(1)	(2)	(3)	(4)	(5)
1.	Commerce	2	Permanent	Asst. Prof. are working on their Post as Ad-hoc Teacher.
2.	Hindi	2	Permanent	—do—
3.	Sociology	1	Permanent	—do—
4.	Marathi	1	Permanent	—do—
5.	English	1	Permanent	—do—

Sd/-
(Hariram Verma)
Principal
18.11.1981
Madhav Mahavidyalaya
Gwaliar (M.P.)

Rules 8(2) and 8(3) of the Bharti Niyam, 1979 read as follows :

"Rule 8(2) :-

On receipt of a reference under sub-rule(1), the Education Officer, the Divisional Superintendent of

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Education or the Ayog, as the case may be, shall furnish information to the Institution concerned in Form IV."

Rule 8(3) :-

If no suitable and otherwise qualified teacher or other employee is available, the Education Officer. The Divisional Superintendent of Education or Ayog, as the case may be, shall furnish a non-availability certificate to the Institution concerned.

FORM IV

[See Rule 8(2)]

Name of person	Name of the institution where from service terminated	Date of Birth	Period of service on post	From	To	Date of termination of service	Qualifi-cation	Reasons for Termination of Service
1	2	3	4	5	6	7	8	9

The grievance of the petitioner is that after his termination on 2nd November, 1979 there were several vacancies for the post of Lecturer in different colleges but the petitioner could not be absorbed because his name did not find place in the statutory register of the Ayog as referred hereinabove and accordingly his name was not sponsored by the Ayog. According to the petitioner, he was given arbitrary and discriminatory treatment and it violated the fundamental right of the petitioner guaranteed under Articles 14, 16 and 21 of the Constitution of India. The petitioner was deprived of an opportunity of employment on the vacancy of Assistant Professor in Madhav College, Gwalior. It has been

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further contended by the petitioner that the petitioner's appointment as Lecturer was a Statutory in nature, hence petitioner is covered by the definition of Section 2(1) of the Bharti Niyam, 1979 and, therefore, he had a statutory right to get his name entered in the register prescribed under the provisions of the Act and get absorbed in Madhav College, Gwalior where vacancy was existed on the post of Smt. Shyama Agrawal who was working as Assistant Professor in Sociology on ad-hoc basis. It was further submitted by the petitioner that since the petitioner has already faced selection committee and he was found suitable and recommended for appointment against leave vacancy, it was not required for the petitioner to face the Selection Committee again and the Ayog failed to enter petitioner's name in the statutory register for appointment of Assistant Professor, in the process has failed to perform its public duty. This inaction on the part of the authorities caused the petitioner loss of 10 valuable years for no fault of his i.e. from the year 1979, accordingly the petitioner claimed salary, allowances and pensionary benefits for the said period. It was argued by the petitioner that if 10 years period is included in his service then he would be eligible for the pensionary benefits as qualified service for the pension is 10 years and the petitioner could not put qualified service because of illegal refusal of the Ayog to enter his name in the statutory register. In these circumstances, it was submitted by the petitioner in person that since the public authority failed to perform his duty or refused to perform his duty, it has infringed the petitioner's fundamental right. However, the petitioner submitted that he is ready to give up his salary and allowances for the said period, but prayed that his services be notionally counted for the purpose of his service and pentionary benefits and accordingly he be

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paid pension and other benefits from the date of his retirement as if the petitioner was in service right from the date of his appointment i.e. 1977.

In the alternative, the petitioner submitted that the State Government be directed to compensate him adequately so that he will be able to live a peaceful retired life and the State Government be also directed to provide free treatment to his mother. The petitioner filed a statement claiming compensation of Rs.25,00,000/- along with interest @ 6% per annum for 18 years. In support of his submission, it was pointed out by the petitioner that there are catena of decisions of Hon'ble Supreme Court granting damages/compensation in cases where public authority infringed the fundamental right or statutory right of a citizen. In such circumstances, this Court has power under Article 226 of the Constitution of India to award damages/compensation to the petitioner. In support of his submission he relied upon the decision of Hon'ble Supreme Court in ***Common Causes vs. Union of India (AIR 1999 SC 2979)*** wherein the Hon'ble Supreme Court held as under :

> "There is, therefore, not much of a difference between the powers of the Court exercised here in this country under Art.32 or 226 and those exercised in England for judicial review. Public law remedies are available in both the countries and the Courts can award damages against public authorities to compensate for the loss or injury caused to the plaintiff/petitioner, provided the case involves, in this country, the violation of fundamental rights by the Govt. or other public authorities or that their action was wholly arbitrary or oppressive in violation of Art. 14 or in breach of statutory duty and is not a purely private matter directed against a private individual."

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It was contended by the petitioner that for the period aforesaid, the petitioner remained unemployed and suffered a loss i.e. (a) individual disorganization (b) family disorganization and (c) social disorganization. It was also pointed out that the petitioner lost his wife Smt. Sushila Devi Bansal on 16.09.2006 because of mental harassment and depression. In such circumstances, the petitioner prayed that a direction be issued to the Ayog to enter his name notionally in Form No.II in the year 1979, when Form No.I was received on 20.09.1979 from Maharaja Mansingh College, Gwalior by the Ayog. The petitioner also prayed that in case notional seniority is given to the petitioner, he will get continuity in service and would be entitled for pensionary benefits.

In support of his submissions, the petitioner relied upon the decisions of Hon'ble Apex Court in ***Smt. Nilabati Behra Vs. State of Orissa (AIR 1993 SC 1960)*** and ***Pilla Sitaram Patrudu and others vs. Union of India and others (AIR 1997 SC 250)***. The above referred case law was cited by the petitioner while he was arguing the case, however, after few days reserving the judgment, petitioner requested in open Court that he be allowed to furnish a list of three cases in support of his case and the same is handed over to the Court Master. We have even considered the said three judgments as well. In **1989 LAB. I.C. 336 (Dr.Jai Prakash Narain Srivastava Vs. Director of Higher Education, U.P. Allahabad & others),** the Allahabad High Court observed as under :

> "It does not require that a teacher who has been appointed against a leave vacancy likely to last for more than six months after facing a Selection Committee constituted under the Act shall have to be appointed or face Selection Committee every time a leave vacancy

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arises. Therefore, the petitioner could have been appointed under Sec.31 (3) (b) in 1982 as he had faced Selection Committee when he was appointed in earlier vacancy. Since he fulfilled all other requirements there does not appear any reason to hold that the resolution of committee of management appointing petitioner substantively when regular post was created in 1986 committed any error of law."

In **AIR 1987 SC 1163 (Smt. Mary Oommen Vs. The Manager, M.G.M. High School)**, the Apex Court observed as under :

"Let us read the rule in question. This rule speaks of qualified teachers. Both the appellant and the 4th respondent satisfy this requirement. It speaks of teachers being relieved as per R. 49 or R.52 or on account of termination of vacancies. R.49 speaks of termination of teachers after vacation, when the vacancy in which they work extend over summer vacation and R.52 speaks of teachers relieved on account of reduction in the number of posts under orders of the department. We are not concerned with these rules. Here, both the teachers were relieved on account of termination of vacancies. The Rule states that such teachers shall have preference for appointment to future vacancies in schools under the same Educational Agency. A future vacancy has arisen. The school where appointment is sought is under the same Education Agency. The proviso is not material in this case. All the conditions for application of this Rule are satisfied. The only question that has to be answered is whether a teacher who had worked in a vacancy earlier has a preferential right over a teacher who worked later in the same school. It is true that the rule does not, in terms, mandate that the one who worked earlier

should be preferred to the one who worked later. But would it be in accord with justice and fair play, to prefer the one who worked later to the one who worked earlier in the absence of anything in the Rule giving to the management a right to choose between the two, on the ground of suitability, merit or efficiency. The judgment of the Division Bench under appeal was delivered on 18-01-1973. The note quoted above was inserted on 04-07-1972. This note leaves no doubt as to how Rule 51-A has to be construed. The Rule states that preference will be given with reference to the date of appointment. When the date of appointment is the same, age should prevail; the elder being given the first preference. Of course, it contains a rider that due regards should be given to the requirements of subject as far as High Schools are concerned. The Division Bench did not choose to accept the clarification contained in the note. The learned Judges held against the appellant, on the wording of the Rule that, in terms, it did not provide for any preference between two or more persons and did not consider it proper to read more into this Rule by considering the Note to R.5 in the same chapter. Although we do not say that a Note to a Rule has any binding effect, it does indeed have a persuasive force. It cannot be ignored that this Note has come as an appendage to R.51-A for clarificatory purposes though it does not form a part of the Rule. The learned Judges felt that propriety and fairness required a decision in favour of the appellant, when they observed :

"It would be proper no doubt to give an earlier appointee preference. But seeing the rule as we ought to see every rule and every section in the Kerala Education Rules and the Kerala Education Act

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as restrictions or regulations in the matter of the free right of the manager to choose and appoint, it is impossible to read more into the rule." "

In **AIR 1997 SC 1310 (State of Kerala Vs. Mother Anasthasia, Superior General & others),** the Apex Court observed as under :

"A reading thereof would indicate that notwithstanding anything contained in sub-section (1) and (sub) Section (4) of Section 57, a teacher discharged from a private college on or after March 14, 1974, due to abolition of a course of study in that college or for any other reason except on disciplinary action against him, shall be given preference in future appointments in a private college or any of the private colleges under the Management of the educational agency within the University area. Admittedly, the third respondent was appointed in a leave vacancy for a short period of three months. The intendment of sub-section (6) appears to be only that when permanent teacher or teacher appointed on a regular basis is discharged from service due to abolition of the course of study in that college or for any other reason, obviously, other analogous *causes* other than disciplinary action, such a teacher who held the post was given preferential treatment for future appointment. A temporary teacher in a leave vacancy cannot be considered as discharged nor claimed the status as discharged employee. Discharge would connote for any other reason ejusdem generis due to abolition of the post or course of study or such similar circumstances except for discharge due to misconduct. Such a teacher only will be eligible to set up preferential claim for appointment but not a teacher who fortuitously came to be appointed in a leave vacancy much less for a limited period."

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The petitioner in person emphatically argued that he was not directly absorbed as Lecturer in Sociology Department in Durga College, Raipur after his services came to an end in the year 1979 while he was working on the post of Lecturer against leave vacancy and in light of the judgment in Misc. Petition No.367/1982, dated 28.03.1989 he was entitled to be absorbed against an earlier available vacancy in Madhav College, Gwalior. It was further contended that he was entitled to arrears of salary from 01.08.1977 to 23.08.1989. The petitioner who was kept on probation in Raipur College is aggrieved for the said probation and it has been emphatically argued before us that as he could not have been asked to work on probation in Durga College, Raipur and has prayed for consequential reliefs from 01.08.1977 including the relief of promotion from the backdate. Lastly, it was submitted by the petitioner that his name should have been inserted in Form No.II in the year 1979.

Learned counsel for the respondents in totality indicated that this petition is not maintainable as the reliefs claimed were earlier also claimed and the matter was finally decided. However, the petitioner again filed this writ petition in the year 1997 which is now under consideration. It was also contended that this petition is liable to be dismissed because this petition is barred by principles of *resjudicata*. It has been further submitted on behalf of the respondents that the petitioner has neither any right nor any lien on the post in question for the reason that he was only appointed against stop gap arrangement for a fixed period as permanent incumbent had gone for long study leave.

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Here, it would not be out of place to indicate that the petitioner claimed appointment in place of Smt. Shyama Agrawal, who had filed Civil Suit and the matter went up to the High Court wherein the Madhya Pradesh High Court while deciding the Second Appeal No.120/1990 decided on 19.03.1992 held as under :

> "37. In the result, the appeal succeeds and is allowed. The judgment and decree passed by the Court below are set aside and those of the trial Court are restored. The plaintiff/appellant is entitled to her costs as per schedule."

From the above discussion, it is crystal clear that facts, circumstances and the prayer in this writ petition are repetition of Misc. Petition No.367/1982 and in such circumstances, we are required to consider whether this writ petition is barred by principle of *res judicata?* We find that Hon'ble Apex Court has opined on the aforesaid subject in various pronouncements.

In **U.P. State Road Transport Corporation Vs. State of U.P. & Another [(2005) 1 SCC 444]**, the Supreme Court observed as under :

> "The principle of res judicata is based on the need of giving a finality to judicial decisions. The principle which prevents the same case being twice litigated is of general application and is not limited by the specific words of Section 11 of the Code of Civil Procedure in this respect. Res judicata applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to reagitate the matter again at a subsequent stage of the same proceedings. (See *Satyadhyan Ghosal V. Deorajin Debi.*)"

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In **Escorts Farms Ltd., vs. Commissioner, Kumanon Division, Nanital and Others – AIR 2004 SC 2186,** the Supreme Court observed as under :

> "Res judicata is a plea available in civil proceedings in accordance with Section 11 of the Code of Civil Procedure. It is a doctrine applied to give finality to 'lis' in original or appellate proceedings. The doctrine in substance means that an issue or a point decided and attaining finality should not be allowed to be reopened and re-agitated twice over. The literal meaning of res is 'everything that may form an object of rights and includes an object, subject-matter or status' and res judicata literally means : 'a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment.' Section 11 of CPC engrafts this doctrine with a purpose that 'a final judgment rendered by a Court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.' "

In **Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra and Others [(1990) 2 SCC 715,** the Supreme Court observed as under :

> "Writ petition No. 1327 of 1982 was argued by J.H. Bhatia, the petitioner, in person. He was directly recruited as Deputy Engineer Class II in July 1959 and has challenged the constitutional validity of the 1978 Rules. Mr Singhvi, the learned counsel for the respondents, took a preliminary objection to the maintainability of the writ application on the ground that his claim stands barred by principles of res judicata.

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Admittedly, he was represented in W.P. No. 672 of 1981, filed before the Bombay High Court which was dismissed on September 7, 1981, upholding 1978 Rules. An application under Article 136 of the Constitution being numbered as S.L.P. No. 8064 of 1981 was filed from this judgement in representative capacity and was dismissed by this Court on December, 29, 1981. These facts were not denied by the petitioner before us, and it was therefore contended on behalf of the respondents that so far the validity of the 1978 Rules is concerned, it must be held to be binding on the petitioner in respect of identical relief now pressed by him in the present writ case. The objection appears to be well founded. It is well established that the principles of res judicata are applicable to writ petitions. The relief prayed for on behalf of the petitioner in the present case is the same as he would have, in the event of his success, obtained in the earlier writ petition before the High Court. The petitioner in reply contended that since the special leave petition before this Court was dismissed in limine without giving any reason, the order cannot be relied upon for a plea of res judicata. The answer is that it is not the order of this Court dismissing the special leave petition which is being relied upon; the plea of res judicata has been pressed on the basis of the High Court's judgment which became final after the dismissal of the special leave petition. In similar situation a Constitution Bench of this Court in *Daryao v. State of U.P.* held that where the High Court dismisses a writ petition under Article 226 of the Constitution after hearing the matter on the merits, a subsequent petition in the Supreme Court under Article 32 on the same facts and for the same reliefs filed by the same parties will be barred by the general principle of res judicata. The binding character of judgments of courts of competent jurisdiction is in essence a part of the rule of law on which the administration of justice, so much

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emphasized by the Constitution, is founded and a judgment of the High Court under Article 226 passed after a hearing on the merits must bind the parties till set aside in appeal as provided by the Constitution and cannot be permitted to be circumvented by a petition under Article 32. An attempted change in the form of the petition or the grounds cannot be allowed to defeat the plea as was observed at SCR p. 595 of the reported judgment, thus :

"We are satisfied that a change in the form of attack against the impugned statute would make no difference to the true legal position that the writ petition in the High Court and the present writ petition are directed against the same statute and the grounds raised by the petitioner in that behalf are substantially the same."

The decision in *Forward Construction Co. v. Prabhat Manda (Regd.), Andheri*, further clarified the position by holding that an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive res judicata underlying Explanation IV of Section 11 of the Code of Civil Procedure was applied to writ case. We, accordingly hold that the writ case is fit to be dismissed on the ground of res judicata."

Accordingly, we do not find any ground where the petitioner could have been directly absorbed as Lecturer in Sociology in Durga College, Raipur. Further, with regard to his grievance that he was entitled to be absorbed against an earlier vacancy available in Madhav College, Gwalior where Smt. Shyama Agrawal was appointed contrary to law on

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04.01.1980, as referred above, the matter of Smt. Shyama Agrawal was finally decided by Madhya Pradesh High Court which cannot be challenged by the petitioner at this stage. We are of the considered opinion that since the petitioner has neither any right nor any lien on post in question, he was not entitled for any salary for the period 04.11.1979 to 23.08.1989. We are further of the considered opinion that the petitioner was appointed on probation on the ground that he was appointed earlier against leave vacancy, it will not give any ground for not being appointed on probation. Accordingly, we find that the petitioner was rightly appointed on probation and he is not entitled for any compensation under the law, as claimed by him.

The petitioner has approached Hon'ble Apex Court by filing S.L.P. No.19243/1995 against the order of Madhya Pradesh High Court rejecting the application of the petitioner to initiate contempt proceedings and the same S.L.P. was dismissed. However, it was provided that it would be open for the petitioner to approach the appellate forum. In stead of approaching appellate forum, the petitioner has field this writ petition. Once Misc. Petition No.367/1982 was decided on 28.03.1989, the petitioner cannot raise the same issue by filing writ petition in the year 1997.

We find that the petitioner after being appointed as Lecturer in Durga College, Raipur was put on probation for a period of one year from the date of his joining by order dated 23.08.1989. Thereafter, the petitioner stated filing representations in respect of seniority and regularization. The representations were rejected. Thereafter, contempt petition was filed by the petitioner which was dismissed by the Madhya Pradesh High Court as the directions issued in W.P. No.367/1982 were

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complied with. It appears that the petitioner has preconceived notions and therefore he is persisting the litigation.

In view of the above discussion, we are of the considered opinion that the cases relied upon by the petitioner do not support the stand of the petitioner by any means.

We are unable to digest that how this petition is maintainable in light of the fact that after the decision of Misc. Petition No.367/1982, the petitioner has filed S.L.P. before Hon'ble Apex Court which was dismissed on 09.07.1990.

We are of the considered opinion that this writ petition is barred by principles of *resjudicata* and no relief can be granted to the petitioner as claimed in this writ petition in light of the fact that the petitioner had already field writ petition with the same reliefs and the matter was finally decided way back in the year 1989 and aggrieved by the same the petitioner preferred S.L.P. which was also dismissed.

Before we part, we would like to indicate that this Court was under the impression that the petitioner was awarded Doctorate i.e. Phd. in Sociology subject in which he was appointed as Lecturer, but the petitioner's reply came in negative. He informed us that he is a Doctor of Naturopathy and when enquired about his degree, he undertook not to write Doctor before his name hereinafter.

In light of the above discussion, the writ petition stands dismissed.

Sd/-
Ag. Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge

Stubby